Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
BellSouth Corporation	)	RM No. 11299
	)	
Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs	))))	

REPLY COMMENTS OF NUVOX COMMUNICATIONS, INC., XO COMMUNICATIONS SERVICES, INC. AND XSPEDIUS COMMUNICATIONS, LLC IN OPPOSITION TO BELLSOUTH'S PETITION FOR RULEMAKING TO CHANGE DISTRIBUTION METHODOLOGY FOR LOCAL NUMBER PORTABILITY AND THOUSANDS-BLOCK NUMBER POOLING

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NuVox Communications, Inc., ("NuVox"), XO Communications Services, Inc. ("XO") and Xspedius Communications, LLC ("Xspedius") (collectively, the "Commenters"), through counsel, hereby respectfully submit their reply comments in opposition to BellSouth Corporation's ("BellSouth's") Petition for Rulemaking to change the cost allocation methodology for shared Local Number Portability ("LNP") and Thousands-Block Number Pooling (otherwise knows as "number pooling") from a revenue-based mechanism to a usage-based mechanism.[1]

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[1] *In the Matter of BellSouth Corporation Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands Block Number Pooling Costs*, Petition for Rulemaking, RM-11299 (filed Nov. 3, 2005) ("BellSouth Petition"). *See also* Pleading Cycle Established for Comments on BellSouth Corporation's Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs, Public Notice, DA 05-3008 (Nov. 21, 2005). XO and Xspedius filed initial comments in the proceeding on January 5, 2006.

I. INTRODUCTION AND SUMMARY

As stated in the initial comments of XO and Xspedius, BellSouth has provided no persuasive arguments or factual justification in support of its Petition that the Federal Communications Commission ("Commission") should initiate a rulemaking proceeding to change the current cost allocation mechanism for LNP administration and number pooling from a revenue-based methodology to a usage-based methodology.[2] Moreover, none of the comments filed in response to BellSouth's Petition provide any support for granting BellSouth's request that it pay less for LNP administration and number pooling and other carriers pay more. As stated by XO and Xspedius in their initial comments and demonstrated by other comments in this proceeding, the shared costs for LNP and number pooling are competitively neutral and have increased *for all carriers in the industry*, not just BellSouth.[3] Accordingly, the Commenters respectfully reiterate that BellSouth's Petition for rulemaking should be denied in its entirety.

The Commenters maintain that the Commission's current cost allocation method for LNP administration and number pooling is competitively neutral, as required by section 251(e)(2) of the Communications Act, as amended (the "Act"),[4] and has facilitated the use and growth of LNP and number pooling, which benefits consumers and promotes competition. To modify the cost methodology from revenue-based to usage-based as BellSouth proposes, would subject competitors to an enormous financial harm that outweighs any legitimate benefit to BellSouth. To further support this point, the Commenters have provided additional financial data in these reply comments to demonstrate the financial harm to NuVox as well as the

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2 BellSouth Petition at 1-2. *See also* Comments of XO and Xspedius at 2.

3 *See* Comments of XO and Xspedius at 2-3.

4 47 U.S.C. § 251(e)(2).

increased harm to XO in light of its merger with Allegiance, which was not reflected in the initial comments.

Moreover, the Commenters refute Verizon's argument that carriers' evolving use of the Number Portability Administration Center ("NPAC") for a variety of transactions, other than LNP administration and number pooling, justifies a change in the Commission's current cost methodology.[5] These types of "evolving" uses, as described by Verizon, which include network grooming, technology upgrades, and carrier record modifications are used by all carriers in the industry just as LNP and number pooling and consequently, benefit the industry as a whole. The fact that NPAC is being more fully utilized and its capabilities are evolving to assist all carriers with additional network issues is not justification for modifying the current revenue-based cost methodology to shift the financial burden to a smaller sect of carriers.[6] For these reasons, as detailed below, and for the reasons set forth in the initial comments of XO and Xspedius, the Commenters respectfully submit that the Commission should deny BellSouth's Petition.

II. COMMENTS FILED IN RESPONSE TO BELLSOUTH'S PETITION PROVIDE NO EVIDENCE OR JUSTIFICATION FOR MODIFYING THE COMMISSION'S REVENUE-BASED COST METHODOLOGY

The comments filed in this proceeding do not provide any support for BellSouth's Petition to modify the Commission cost methodology for LNP administration and number pooling from revenue-based to usage-based. Indeed, the Connecticut Department of Public Utility Control ("CTDPUC") takes the same position as the Commenters that the Commission

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5 *See* Verizon Comments at 5-6.

6 In fact, as discussed below, it would seem that at this point Verizon would be taking advantage of NPAC's "evolving" uses considering the network reconfiguration Verizon will face in its merger with MCI.

should deny BellSouth's Petition.[7] Specifically, the CTDPUC states that it does not believe "conditions have sufficiently changed warranting a change in the manner in which these costs are currently recovered."[8] Moreover, the CTDPUC's justification, from a regulator's perspective, is directly on point with that of the Commenters:

> It is clear to the CTDPUC that the Commission's existing cost allocation mechanism to recover number administration and LNP costs from telecommunications carriers is *competitively neutral* and that the Commission's current cost allocation mechanism continues to be in the *public interest by not unduly burdening new entrants to the telecommunications marketplace with an excessive share of these costs.*[9]

The CTDPUC recognizes, as do the Commenters, that BellSouth's proposed usage-based mechanism is not competitively neutral, would disadvantage carriers that continue to seek a competitive presence in the market against the Incumbent Local Exchange Carriers ("ILECs"), and would discourage carriers from engaging in LNP and number pooling activities that benefit all consumers and promote competition in the local marketplace.[10]

Moreover, the evidence presented in the comments of ILECs show nothing more than carriers' shared costs for LNP administration and number pooling have increased.[11] Nevertheless, as the Commenters maintain, the fact that the shared costs of all carriers in the industry have increased demonstrates that the Commission's revenue-based cost allocation is working as Congress intended to ensure that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be born by all

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[7] CTDPUC Comments at 2.

[8] *Id.*

[9] *Id.* at 3. Furthermore, as noted by Time Warner, "BellSouth's own customers benefit from the increased competition enabled by LNP just as much as the customers of competitive wireline and wireless service providers." Time Warner Telecom Comments at 12.

[10] *See* XO and Xspedius Comments at 3.

[11] *See* Qwest Comments at 3; Verizon Comments at 4-5; USTA Comments at 2.

telecommunications carriers on a competitively neutral basis as determined by the Commission."[12]

Specifically, as noted by Integra, which opposes BellSouth's usage-based cost methodology proposal, BellSouth's argument in support of its Petition is essentially that its shared costs have increased, even though it believes that its number of billable transactions have decreased.[13] Moreover, Qwest claims that its allocation of the shared costs for LNP administration and number pooling have almost doubled since 2003.[14] Qwest complains that its shared costs under the revenue-based methodology increased by 100 percent. Under the usage-based approach proposed by BellSouth and supported by Qwest, however, competitive carriers' costs would increase by a much greater percent as discussed below in Section III.[15] Although BellSouth and Qwest complain that their costs have increased, under the Commission's current cost methodology no one carrier is burdened disproportionately and therefore, the revenue-based cost mechanism for LNP administration and number pooling should be maintained and BellSouth's Petition should be denied.

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12 §47 U.S.C. § 251(e)(2). Moreover as noted by COMPTEL, "[t]he elephant in the room that BellSouth disingenuously tries to ignore is that *all* carriers and the customers of *all* carriers benefit from the availability and maintenance of an accurate number portability database." COMPTEL Comments at 3.

13 Integra Telecomm Comments at 3.

14 Qwest Comments at 4 ("Qwest's allocation of the shared LNP and pooling costs has almost doubled since 2003, rising from $2.4M in 2003 to over $4M in 2005. Yet from 2001 to 2005, Qwest's revenues have declined marketedly (by almost 10 percent).").

15 *See* comparison chart on XO/Allegiance of revenue-based and usage-based allocation systems, *infra* at 8.

III. BELLSOUTH'S PROPOSED USAGE-BASED COST ALLOCATION MECHANISM FOR LNP AND NUMBER POOLING PLACES DISPROPORTIONATE FINANCIAL BURDEN ON COMPETITORS

As emphasized by XO and Xspedius in their initial comments and supported by other comments in this proceeding, BellSouth's Petition to change its cost allocation rules for LNP and number pooling from a revenue-based mechanism to a usage-based mechanism is unpersuasive and should be rejected.[16] Indeed, as noted in the XO and Xspedius comments, under BellSouth's usage-based cost methodology proposal, Xspedius's costs for numbering administration would increase more than *tenfold.*[17] Moreover, the data provided by NeuStar for NuVox demonstrates that NuVox's costs would increase *fourteen times* under BellSouth's usage-based proposal as opposed to the current revenue-based methodology.

Furthermore, with respect to XO's increased costs under BellSouth's usage-based proposal, the data provided in the initial comments only reflects the increased costs of the XO entity.[18] Although persuasive in and of itself, the data does not reflect XO's merger with Allegiance, which was completed in 2004. Accordingly, in order to provide the Commission with a full and accurate picture of the financial harm that competitors, such as XO, would suffer under BellSouth's proposal, XO provides the following chart, which demonstrates: (1) the

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[16] *See* XO and Xspedius Comments at 7-10 (XO and Xspedius also noted that the data provided from the Local Competition Report, which BellSouth used to support its claim that the local market has "matured" is from show that by December 31, 2004, and therefore, does not capture any of the impact of the Commission's *Triennial Review Order* or *Triennial Review Remand Order*. Specifically, the Local Competition Report states that there were 32.9 million CLEC switched access lines as of December 31, 2004; however, approximately 50% of these lines were provided over the Unbundled Network Element Platform ("UNE-P"), which is no longer available pursuant to the *Triennial Review Remand Order*). XO and Xspedius Comments at 8. *See also* CTDPUC Comments at 2; Integra Comments at 2 ("The arguments BellSouth advances in its petition do not justify BellSouth's proposed cost increase. The Commission has already considered the appropriate methodology for allocating the costs associated with porting and pooling and decided that a revenue-based approach is appropriate.").

[17] XO and Xspedius Comments at 12.

[18] *Id.* at 11-13.

financial burden of the current rules as measured by the percentage of revenue paid by BellSouth and XO (reflecting its merger with Allegiance) of total revenues is relatively minor, and (2) the competitive impact as measured by a percentage of EBITDA dedicated to the administration of LNP and number pooling is somewhat similar for BellSouth and XO (including Allegiance):

Comparison of Revenue and EBITDA Burdens of BellSouth and XO/Allegiance
Under Current Revenue-Based Allocation System (2004)[19]

	% of Revenues	% of EBITDA
BellSouth	.033%	.074%
XO	.036%	2.4%

As reflected by the chart, the percent of revenues of XO dedicated to LNP administration and number pooling increases from .02 percent to .036 percent and the corresponding percentage of EBITDA increases from 1.5 percent to 2.4 percent with its merger with Allegiance, demonstrating that the percentage of revenue and EBITDA are relatively equal for BellSouth and XO, a competitive carrier. Such result meets the competitive neutrality mandate of section 251(e)(2) and, therefore, the revenue-based methodology for cost allocation of LNP administration and number pooling should be maintained.

To further support the position of the Commenters that the revenue-based cost methodology should continue and BellSouth's Petition should be denied, XO provides the following chart that illustrates the higher percentage of revenue and percentage of EBITDA XO (as merged with Allegiance) must dedicate to LNP and number pooling administration under a revenue-based mechanism and a usage-based mechanism:

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[19] Sources for chart include: (1) BellSouth Data from Petition and UBS; (2) XO and Allegiance LNP/Number Pooling Data from NeuStar; and (3) XO and Allegiance revenues/EBITDA provided by company.

Comparison on XO/Allegiance of Revenue-Based and Usage-Based Allocation Systems:[20]

	% of Revenues (Revenue Based)	% of Revenues (Usage Based)	% of EBITDA (Revenue Based)	% of EBITDA (Usage Based)
2004	.036%	.66%	2.4%	44%
2005E	.048%	1.45%	.52%	16%

As this chart demonstrates, the disparity between the percent of revenue and percent EBITDA that XO would have to devote to LNP and number pooling administration in comparison to BellSouth increases even more considering its merger with Allegiance.[21] Accordingly, any modification by the Commission from a revenue-based cost methodology to a usage-based methodology, as proposed by BellSouth, would be even more financially devastating for XO and the impact on other competitors, such as NuVox and Xspedius would likewise be very harmful. Such disparities could never satisfy the competitive neutrality mandate of section 251(e)(2) of the Act and therefore, the Commission should not consider BellSouth's usage-based proposal and its Petition should be summarily rejected.

IV. EVOLVING USES OF NPAC DO NOT JUSTIFY MODIFYING REVENUE-BASED COST METHODOLOGY

As discussed, the Commission should reject BellSouth's Petition as any move towards a usage-based cost methodology for LNP administration and number pooling would be financially disastrous to competitors, such as NuVox, XO and Xspedius. Moreover, the Commission should recognize that Verizon's claim that carriers' "evolving use of NPAC

[20] Sources for chart include: XO and Allegiance LNP/Number Pooling Data from NeuStar, and XO and Allegiance revenues/EBITDA provided by company.

[21] The percent revenue that XO (with Allegiance) must dedicate to LNP administration and number pooling under BellSouth's usage-based proposal increases from .6% to .66% in 2004 and 1.3% to 1.45% on 2005E. Moreover, the percent EBIDTA that XO (with Allegiance) must dedicate to LNP administration and number pooling under BellSouth's usage-based proposal increases from 41% to 44% in 2004 and 15% to 16% in 2005E.

transactions for a variety of purposes" that do not involve LNP administration or number pooling is in no way justification to modify the current revenue-based cost methodology.[22]

In its comments, Verizon suggests that the new "evolving" uses of NPAC fall into two categories, both of which do not involve LNP administration or number pooling.[23] Specifically, Verizon describes the first category as "intra-service provider transactions," which include functions such as "network grooming and technology upgrades."[24] Verizon describes the other category as "modifies," which includes carrier record modifications.[25] The Commenters acknowledge that carriers use NPAC services for networking purposes outside of LNP administration and number pooling, however, the Commenters firmly disagree with Verizon's contention that such activities justify any modification to the Commission's revenue-based cost methodology for LNP administration and number pooling.

It is true that many carriers use NPAC services to effectuate technology upgrades. For example, XO has used NPAC to move thousands of numbers from DMS switches to Sonus switches (and vice-versa) to support different products and reflect number inventory. XO also uses NPAC to perform modifies on incorrect Local Routing Numbers ("LRNs") as well as to correct errors associated with the Line Information Data Bases ("LIDB"), Caller ID with NAME ("CNAM"), and Custom Local Area Signaling Services ("CLASS").

Such activities, however, are not limited to XO but rather, are standard practice in the industry. Indeed, when carriers are involved in any change of ownership due to mergers, bankruptcies or acquisitions, carriers must use NPAC to modify record information within LIDB,

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22 Verizon Comments at 5.

23 *Id.*

24 *Id.*

25 *Id.* at 5-7.

CNAM and CLASS systems. Moreover, carriers change LIDB, CNAM and CLASS providers and therefore, NPAC transactions are required to effectuate these provider changes.

Verizon also relies upon NPAC to groom its network, make technological upgrades and record modifications, and fix errors in various calling databases. Indeed, as stated above, one important reason for using NPAC for intra-company transaction and modifies is mergers. Company mergers require a significant amount of network migrations to change the Service Profile Identifier ("SPID") and make the corresponding modifications on LIDB, CNAM or CLASS systems. Considering Verizon's recently-closed purchase of MCI, Verizon will likely make a significant number of NPAC transactions in order to merge the networks of two of the largest telecommunications companies.

The Commission should recognize that the additional functions of NPAC, as discussed above, better serve the industry and consumers, just as LNP administration and number pooling. Accordingly, the cost allocation for all NPAC uses must be competitively neutral in accordance with section 251(e)(2) of the Act. The Commission's current revenue-based cost methodology is competitively neutral and should be applied to all NPAC's functions, and Verizon's claim that the evolving nature of NPAC justifies a change in the Commission's revenue-based cost methodology for LNP administration and number pooling should be rejected.

V. CONCLUSION

For the foregoing reasons, and those set forth in the initial comments of XO and Xspedius, the Commenters respectfully urge the Commission to deny BellSouth's Petition for Rulemaking.

Respectfully submitted,

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